

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-114399-20

Date:

November 24, 2020

Legend:

Taxpayer =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Month 1 =

Month 2 =

Year =

Firm =

Dear _____ :

This letter responds to a letter dated June 23, 2020, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under section 856(c) of the Internal Revenue Code (the Code) to be treated as a real estate investment trust (REIT) effective Date 3.

FACTS

Taxpayer is a State limited liability company that was formed on Date 1 for the purpose of investing in real estate located across the United States. Taxpayer made an initial classification election on Form 8832, *Entity Classification Election*, to be treated as a corporation for U.S. income tax purposes effective Date 1. Taxpayer had no activity in the year ended Date 2 and did not file a U.S. income tax return for that year.

Taxpayer intended to be treated as a REIT under subchapter M of the Code effective for the calendar year ended Date 4 (the First REIT Taxable Year). Taxpayer has no employees, and relies on Firm for all tax compliance matters, including the preparation and timely filing of its U.S. income tax returns.

Firm timely filed Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, on behalf of Taxpayer for the First REIT Taxable Year, extending the filing deadline to Date 5. Part I of the Form 7004 indicated that the application was for Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*. Due to an administrative error, Firm did not file Taxpayer's Form 1120-REIT by the filing deadline of Date 5.

In Month 1 of Year, Firm completed preparation of the Form 1120-REIT and provided it to Taxpayer for review. Shortly thereafter, Taxpayer reviewed and signed the Form 1120-REIT, and directed Firm to paper file the Form 1120-REIT. Prior to Year, Firm's process for filing returns on behalf of clients was as follows: paper filed returns were filed by the Firm employees that prepared those returns (the Engagement Team), and electronically filed returns were filed by Firm's centralized processing team (the Processing Team). Beginning in Year, Firm implemented a new process where all returns filed on behalf of clients, including Taxpayer, would be filed by the Processing Team. Pursuant to this new filing process, in Month 1 of Year, the Engagement Team provided Taxpayer's signed Form 1120-REIT to the Processing Team to paper file. Both Taxpayer and the Engagement Team believed the Form 1120-REIT was timely filed, and that no further action was required.

The Processing Team assembled the returns for Firm clients, including Taxpayer, and a temporary hire collected the returns to deliver to the mailroom. It was after working hours and the mailroom staff had left for the evening, so the temporary hire placed the returns in a box without telling the Processing Team. The Processing

Team recorded in its records that the mailing had taken place. By the next day, the temporary hire was busy and forgot about the returns placed in the box. Due to the high volume of work, the Processing Team maintained many boxes with paper, and the box containing Taxpayer's return was overlooked.

In early Month 2 of Year, the Processing Team discovered that the box containing Taxpayer's Form 1120-REIT had not been processed and the returns did not get mailed out. The Processing Team immediately informed the Engagement Team, who shortly thereafter informed Taxpayer of the inadvertent failure to timely file Taxpayer's Form 1120-REIT. At all times prior to that discovery, Taxpayer believed that Firm had timely filed its Form 1120-REIT.

On Date 6, Firm filed Taxpayer's Form 1120-REIT for the First REIT Taxable Year. Immediately thereafter, Taxpayer engaged Firm to prepare a ruling request seeking under sections 301.9100-1 and 301.9100-3 an extension of time to allow Taxpayer to make an election pursuant to section 856(c)(1) to be treated as a REIT under subchapter M of the Code effective Date 3.

REPRESENTATIONS

Taxpayer makes the following representations in connection with this request for an extension of time:

1. Taxpayer filed the request for relief before the failure to make the election was discovered by the Service.
2. The interests of the government are not prejudiced within the meaning of section 301.9100-3(c). Granting the relief will not result in Taxpayer having a lower U.S. income tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer does not seek to alter a return position for which an accuracy-related penalty has or could have been imposed under section 6662 at the time it requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose not to file the election.
5. Taxpayer is not using hindsight in requesting this relief. No specific facts have changed since the due date for making the election that makes this election advantageous to Taxpayer.
6. The period of limitations on assessment under section 6501(a) has not expired for

Taxpayer for the taxable year for which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, affidavits on behalf of Taxpayer have been provided as required by section 301.9100-3(e)(2) and (3).

LAW AND ANALYSIS

Section 856(c)(1) provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year an election to be a REIT or has made such an election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to section 1.856-2(b) of the Income Tax Regulations, the election shall be made by the trust by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to mean an election whose due date is prescribed by a regulation, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have

known that the professional was not (i) competent to render advice on the regulatory election, or (ii) aware of all relevant facts. A taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed of the required election, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under section 856(c) to be treated as a REIT effective Date 3. Accordingly, due to the reasonable extension of time granted to Taxpayer, Taxpayer's Form 1120-REIT filed on Date 6 for the First REIT Taxable Year is considered a timely election under section 856(c) for Taxpayer to be treated as a REIT under subchapter M of the Code effective Date 3.

CAVEATS

This ruling is limited to the timeliness of the filing of Taxpayer's election under section 856(c). This ruling's application is limited to the facts, representations, and Code and regulation sections cited herein. Except as provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed or implied regarding whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of chapter 1 of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the U.S. federal income tax returns involved, the

director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

John W. Rogers, III
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)

cc: